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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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EXAMINER

10/1/95

ART UNIT

PAPER NUMBER

10/1

DATE MAILED:

10/1/95

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

# Office Action Summary

Application No.  
**09/408,068**

Applicant(s)  
**Shealy**

Examiner  
**Drew Becker**

Group Art Unit  
**1761**



☒ Responsive to communication(s) filed on Dec 19, 2000

☒ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claims

☒ Claim(s) 1-7 is/are pending in the application.

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

☐ Claim(s) \_\_\_\_\_ is/are allowed.

☒ Claim(s) 1-7 is/are rejected.

☐ Claim(s) \_\_\_\_\_ is/are objected to.

☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been  
☐ received.

☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_.

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

☐ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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## DETAILED ACTION

### *Claim Rejections - 35 USC § 112*

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 4-6 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Claims 4-6 recite a "product multiplier" and a "derived compensation multiplier". There does not appear to be any disclosure in the specification of what these two limitations are.

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 4-6 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
5. Claims 4-6 recite a "product multiplier" and a "derived compensation multiplier". It is not clear what values constitute a "product multiplier" and a "derived compensation multiplier" or what the difference is between the two values.

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***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371© of this title before the invention thereof by the applicant for patent.

7. Claims 1, 3, and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by Vaseloff et al [Pat. No. 5,186,097].

Vaseloff et al teach a cooking appliance comprising a fry pot (Figure 1, 18), a heating device (Figure 2, 26), a temperature sensor (Figure 2, 34), a control panel (Figure 4), and a computerized controller which monitors the temperature of the heating medium in the fry pot and adjusts the heating device according to a programmed algorithm (abstract; Figures 5A-5F).

8. Claim 2 is rejected under 35 U.S.C. 102(e) as being anticipated by Harter et al [Pat. No. 5,847,365].

Harter et al teach a cooking appliance comprising a fryer (column 1, line 15), a temperature sensor (column 1, line 59), and a control system which compensates for oil stratification (column 2, lines 42-45).

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***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 4-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Maher Jr [Pat. No. 6,018,150].

Maher Jr teaches an appliance and method of using the appliance to cook a food product comprising a vat (Figure 1, 8), a burner (Figure 1, 4), a temperature sensor (Figure 1, 2), a controller with means to adjust the cook cycle according to a non-linear compensation (column 13, line 38), and loading a food item into a heating medium followed by cooking it (column 1, lines 29-39). It would have been obvious to one of ordinary skill in the art to adjust the non-linear compensation of Maher Jr according to the particular type of cooking medium, type of food, and level of cooking since these elements require the use of different operating parameters. such as temperature and time.

***Response to Arguments***

11. Applicant's arguments filed December 19, 2000 have been fully considered but they are not persuasive.

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Applicant argues against the "methodology" of Vaseloff et al with regards to claims 1, 3, and 7. It should be noted that the "methodology" is merely a preferred method of use of the claimed apparatus. Vaseloff et al teach a control means which periodically measures and adjusts the temperature of the cooking oil (abstract). Regardless, the "methodology" cited by the applicant in the arguments is not present in the claims.

Applicant argues against the "methodology" of Harter et al with regards to claim 2. It should be noted that the "methodology" is merely a preferred method of use of the claimed apparatus. Regardless, applicant's attention is drawn to column 2, lines 42-45 of Harter et al, as cited in the previous office action, which teach a controller with means for compensating for oil stratification. Regardless, the "methodology" cited by the applicant in the arguments is not present in the claims.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., compressing cook time increments based on how a cooking medium at various temperatures affects a specific product) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. *In re Van Guens*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Regardless, Maher Jr also teaches a control with means to adjust the cook cycle according to a non-linear compensation (column 13, line 38). Furthermore, it is not clear what values constitute a "product multiplier" and a "derived compensation multiplier" or what the difference is between the two values as discussed above.

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*Conclusion*

12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Drew Becker whose telephone number is (703)-305-0300. The examiner can normally be reached on Monday-Thursday from 7:00 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gabrielle Brouillette, can be reached on (703)-308-0756. The fax number for this Group is (703)-305-3602.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0661.

Drew Becker

February 1, 2001

2001 7  
KEITH HENDRICKS  
PRIMARY EXAMINER